amount paid on the land against the husband of the owner and the trustee for breach of the promises to apply her payments to satisfaction of the former trust deed, there being no consideration therefor alleged or proved, the wife being the sole owner of the land.

[Ed. Note.—For other cases, see Contracts, Dec. Dig. § 62.* 3 Va.-W. Va. Enc. Dig. 339, 343.]

3. Deeds (§ 94*)—Merger of Contract in Deed.—Fact that both the owner and her husband signed the option taken by plaintiff to purchase the land would not aid the cause of action for breach of the husband's promise, as the dealings between the parties culminated in the deed to plaintiff and her deed to secure deferred payments.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 266; Dec. Dig. § 94.* 9 Va.-W. Va. Enc. Dig. 786; 13 Id. 496.]

4. Covenants (§ 102*)—Warranty—Breach.—The covenants in plaintiff's deed of general warranty of title would not avail her, as she was not evicted by a paramount title.

[Ed. Note.—For other cases, see Covenants, Cent. Dig. § 157; Dec. Dig. § 102.* 3 Va.-W. Va. Enc. Dig. 762.]

Judgment affirmed. All the judges concur.

NEW YORK, P. & N. R. CO. *v.* WILSON'S ADM'R.

June 10, 1909. On Rehearing, June 24, 1909.

[64 S. E. 1060.]

1. Evidence (§ 507*)—Opinion Evidence—Expert Testimony.—How far a red lantern used as a railroad danger signal could be observed on a foggy morning is not a matter of expert knowledge requiring expert testimony, being a matter resting on common experience.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 507.* 5 Va.-W. Va. Enc. Dig. 792.]

2. Evidence (§ 483*)—Opinion Evidence—Matters of Common Knowledge.—In an action for a railroad fireman's death by the collision of his train with a freight train which was standing still because plaintiff's train crew did not observe a red light signal sent back by the freight train crew, a witness who was on the freight train the morning of the accident, and saw the fog and the signal lanterns, could testify how far such lantern could be observed under the circumstances; that being a matter depending upon common experience.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 483.* 5 Va.-W. Va. Enc. Dig. 793.]

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

3. Appeal and Error (§ 1050*)—Harmless Error—Prejudicial Effect—Admission of Testimony.—In an action for a railroad fireman's death by the collision of his train with a freight train ahead caused by the crew on decedent's train not observing the red lamp signals sent back by the freight train, any error in admitting testimony by one who was on the train at the time of the accident as to how far the red lantern could be seen through the fog was harmless.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 1050.* 1 Va.-W. Va. Enc. Dig. 582.]

4. Evidence (§ 539½*)—Opinion Evidence—Expert Testimony—Operation of Railroads.—One who had been a railroad brakeman and engineer for a number of years was qualified to testify as to what the usual railroad danger signals were and their meaning.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 539½.* 5 Va.-W. Va. Enc. Dig. 785.]

5. Appeal and Error (§ 1051*)—Harmless Error—Admission of Testimony—Facts Otherwise Proved.—Even if a witness was not qualified to testify as to what were the usual danger signals used in the operation of a railroad, the admission of his testimony was not reversible where such facts were proved without objection by another witness.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4161-4170; Dec. Dig. § 1051.* 1 Va.-W. Va. Enc. Dig. 582.]

6. Master and Servant (§ 265*)—Injuries—Negligence—Burden of Proof.—Plaintiff must show that his intestate was injured by his employer's negligence in order to recover therefor; that he was injured being of itself insufficient.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 265.* 9 Va.-W. Va. Enc. Dig. 722; 11 Id. 343.]

7. Master and Servant (§ 137*)—Master's Duty—Care Required—Operation of Trains.—Where a freight train which was running ahead of intestate's train stopped because of an accident, it was the company's duty to use reasonable care to give proper warning of the danger to intestate's train, but its duty was performed when proper signals were given, even though they were not observed by the employees on intestate's train.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 137.* 9 Va.-W. Va. Enc. Dig. 670, et seq.]

8. Master and Servant (§ 236*)—Injuries—Contributory Negligence.—Plaintiff could not recover for intestate's death by collision with a freight train, which was running ahead of his train, if the failure to observe the danger signals given by the employees of the freight train was due to intestate's failure to keep a proper lookout, as he was required to do.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs 1907 to date, & Reporter Indexes.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 236.* 9 Va.-W. Va. Enc. Dig. 700; 4 Id. 249.]

9. Master and Servant (§ 296*)—Injuries—Actions—Instructions—Misleading Instructions.—In an action for intestate's death in a collision of his engine with a freight train which had stopped ahead of it, because of the failure to observe danger signals sent back by the freight train, a requested instruction that, if intestate did not use ordinary care by keeping a proper lookout for danger signals, he contributed to his death, and could not recover, though defendant was also negligent, correctly stated the law, and it was erroneous and misleading to qualify it by adding, "provided such lookout would have prevented the accident"; the qualification having already been sufficiently covered by other instructions.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 727; 4 Id. 258.]

10. Master and Servant (§ 137*)—Injuries—Negligence.—Where a freight train which was running ahead of intestate's train stopped and sent back a flagman to signal intestate's train, if, under the circumstances the only proper signal was a fusee, the flagman was negligent in not supplying himself with them before leaving the caboose.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 137.* 10 Va.-W. Va. Enc. Dig. 352.]

11. Master and Servant (§ 137*)—Master's Duty—Care Required.—It is a railroad company's duty to exercise reasonable care for the safety of its employees, but it need not exercise more than ordinary care under the circumstances, however hazardous the employment may be.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 137.* 9 Va.-W. Va. Enc. Dig. 689.]

12. Trial (§ 203*)—Instructions—Issues and Theories of Case.—In an action for intestate's death by the collision of his engine with a freight train ahead of it, because intestate's crew did not see the red lantern sent back by the freight train, where plaintiff claimed that a lantern signal was not adequate under the circumstances, but that a fusee signal should have been used, but there was evidence to support defendant's theory that a red lantern signal was sufficient, a requested instruction embodying its theory should have been given.

[Ed. Note.—For other cases, see Trial, Dec. Dig. § 203.* 7 Va.-W. Va. Enc. Dig. 707.]

Judgment reversed. All the judges concur.

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.